IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1456 of 2005

Between:

Kovvuri Subba Raju S/o Rama Raju
Resident of Gaddapalem Village S.Rayavaram Mandal, Visakhapatnam District.

... PETITIONER

AND

1 Sri Anna Praneswara Swamy Temple Lingarajupalem, S.Rayavaram Mandal Visakhapatnam District Represented by its Managar
2 The Assistant Commissioner of Endowments Visakhapatnam, Visakhapatnam District
3 The Commissioner of Endowments Andhra Pradesh, Hyderabad.
4 Sri Dandu Ramamurthy Raju S/o Venkata Raju
Resident of Lingarajupalem, S.Rayavaram Manadal Visakhapatnam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus: (i) Declaring the auction notice issued by the 1st respondent dt. 17/07/2004 proposing to auction the lease hold rights and the consequential auction held on 28/07/2004 in respect of the land in survey No.19 admeasuring 4 acres 76 cents situated at Lingarajupalem, S.Rayavaram Mandal, Visakhapatnam district, for the years 2004-05 to 2006-07 and the lease as approved in the proceedings of the 2nd respondent dt. 29/12/2004 as illegal, arbitrary and unconstitutional apart from being violating of principles of natural justice and against the judgment of the special officer cum principal District Musif, Yelamanchill, dt. 21/04/1995 in ATC No.2/1994 and against my lease hold rights which I have been enjoying for the last 30 years

and against Section 82 of A. P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 and set aside the same; consequently (ii) declare the orders passed by the 2nd respondents in D.Dis.No.A3/2409/2004, dt. 29/12/2004 as illegal, arbitrary and unconstitutional apart from being violative of principal of natural justice and set aside the same; consequently (iii) direct the respondents either to continue lease in my favour as per the existing conditions or sell the land in survery No.19 admeasuring 4 acres 76 cents situated at Lingarajupalem, S.Rayavaram Mandal, Visakhapatnam district in terms of Section 82 of A.P., Charitable and Hindu Religious Institutions and Endowments Act, 1987.

Counsel for the Petitioner: MR.NANDIGAM KRISHANA RAO

Counsel for the Respondents 2 & 3: GP FOR ENDOWMENTS

Counsel for the Respondent No.1: Mrs. Indrani

The Court at the stage of admission made the following:

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ORDER:

The petitioner has been a tenant, in respect of Ac.4.76 cents of land belonging to Sri Anna Praneswara Swamy Temple, Lingarajupalem, S.Rayavaram Mandal of Visakhapatnam District, for the last several years. In view of termination of tenancies over the agricultural lands belonging to temples under Section 82 of the Hindu Charitable and Religious Institutions and Endowments Act, 1987, (for short 'the Act) the Executive Officer of the temple conducted auction of leasehold rights on 28-07-2004. The petitioner approached this Court by filing W.P.No.9036 of 2004. The writ petition was disposed of on 28-07-2004, directing that it shall be open to the

petitioner to pursue his remedies to seek a declaration that he is a landless poor and till his claim is determined, the respondents therein were directed not to conduct any auction. Obviously, it was rather incidental that the auction was held on the same day on which the writ petition was disposed of.

The petitioner filed an application before the Assistant Commissioner of Endowments, Visakhapatnam-2nd respondent, seeking a declaration that he is landless poor as defined under explanation to Section 82 of the Act. Through orders dated

29-12-2004, the 2nd respondent rejected the claim of the petitioner. The same is challenged in this writ petition.

Heard the learned counsel for the petitioner, the learned Government Pleader for Endowments and learned Standing Counsel for Temple.

Sri Nandigam Krishna Rao, learned counsel for the petitioner, had advanced several contentions touching on facts and law. He submits that his client continuous to be in possession of the land and that he was not given an opportunity of being heard in the proceedings before the second respondent.

This Court is not inclined to deal with these contentions, for the reason that the appeal to the Regional Joint Commissioner is provided for under the relevant rules. The questions as to whether the land belonging to the temple is a wet or dry or whether the petitioner holds any other property as owner or tenant, and whether his financial condition is that he does not deserve to be treated as a landless poor, need to be considered by the appellate authority. The interest of the petitioner can be protected by directing that if he is already in possession of the land, he be permitted to continue in the same, on payment of the rent, which is fetched in the bid.

Hence, the writ petition is disposed of directing that;

a. It shall be open to the petitioner to file an appeal before the Regional Joint Commissioner, against the order passed by the Assistant Commissioner. If such an appeal is presented within two weeks from today, it shall be entertained as having been presented within the limitation.

b. In case the petitioner is in possession of the property as on today, he shall be entitled to continue in possession, till disposal of the appeal by the appellate authority, if presented within the time stipulated, on the condition that the petitioner shall deposit the same rent that is offered by the highest bidder in the auction held on 28-07-2004.

c. The continuation of the petitioner shall be purely on adhoc basis and not on the basis of his previous tenancy.

There shall be no order as to costs.

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15-02-2005

Dated: 15-02-2005

Note: Furnish copy in two days.

B/o.

LSK/TS.

ASSISTANT REGISTRAR

//**TRUE COPY**//

SECTION OFFICER.

To

1. The Assistant Commissioner of Endowments, Visakhapatnam, Visakhapatnam District
2. The Commissioner of Endowments Andhra Pradesh, Hyderabad.

3. The Manager, Sri Anna Praneswara Swamy Temple Lingarajupalem, S.Rayavaram mandal Visakhapatnam District.
4. Two C.Cs. to the Government Pleader for Endowments, High Court Buildings, Hyderabad. (O.U.T.)

5. Two C.D. copies.